

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	No. 4:10-cr-00459-3
	§	
V.	§	JUDGE KENNETH M. HOYT
	§	
	§	
EFRAIN RODRIGUEZ-MENDOZA,	§	
	§	<i>This is a Capital Case</i>
Defendant.	§	

**JOINT MOTION TO CONTINUE
EVIDENTIARY HEARING AND BRIEFING SCHEDULE
FOR *ATKINS* CLAIM**

TO THE HONORABLE KENNETH M. HOYT:

The Government through the undersigned counsel, hereby respectfully request that the Court grant this request to continue the current scheduling order relating to the Defendant's claim for relief under *Atkins v. Virginia*, 536 U.S. 304 (2002). Reasons follow:

1. On January 24, 2022, this Court set an evidentiary hearing for Mr. Rodriguez-Mendoza's *Atkins* claim for October 3, 2022. The defense filed its brief in support of this claim on January 19, 2021 under seal. The Government's response is due on August 15, 2022. The Defendant's reply brief is due on September 15, 2022. (ECF 724).

2. Since the Court's Order, the parties have continued discussions regarding a potential negotiated resolution of this case. On October 22, 2021, the Defendant submitted a request to the Government to deauthorize this case and withdraw the Notice of Intent to Seek a

Death Sentence. The Government is still considering the request to deauthorize. If granted, the Defendant's deauthorization request would obviate the need for additional briefing or an evidentiary hearing on the *Atkins* claim. It would also obviate the need for any additional pre-trial litigation or a trial. The requested continuance will permit counsel for Mr. Rodriguez-Mendoza to potentially resolve this case with a negotiated disposition and avoid the time and expense for the parties and the Court that a lengthy evidentiary hearing would entail.

3. Accordingly, Mr. Rodriguez-Mendoza respectfully requests that the *Atkins*-related proceedings be rescheduled as follows: (1) the Government's *Atkins* Response shall be due on February 15, 2023; (2) Mr. Rodriguez-Mendoza's reply brief shall be due by March 15, 2023; (3) the *Atkins* hearing shall begin on April 17, 2023; (4) proposed findings of fact and conclusions of law shall be submitted within 30 days of the availability of the transcripts for the *Atkins* hearing; and (5) the parties' responses to the proposed findings of fact and conclusions of law shall be submitted within 15 days of the proposed findings.

4. This motion is not intended for delay, but rather to allow justice to be done in this complex capital case. The defense is requesting this schedule so that counsel can provide effective representation, consistent with their obligations under the Sixth and Eighth Amendments. All limits under the Speedy Trial Act continue to be waived by the filing of this motion.

5. Counsel for Mr. Rodriguez-Mendoza have conferred with counsel for the Government, who join in this request.

WHEREFORE, for the reasons set forth herein, the parties respectfully request that the Court grant this motion. (A proposed order is attached.)

Respectfully Submitted

/s/ Barry K. Disney
Barry K. Disney
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Dated: July 11, 2022

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2022, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on counsel of record for the above captioned case.

/S/ Barry K. Disney
Barry K. Disney